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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,107	03/03/2004	Michelle Grandy	20119-0003	4100

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EXAMINER

LE, TAN

ART UNIT	PAPER NUMBER
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3632

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/792,107	<b>Applicant(s)</b> GRANDY, MICHELLE	
	<b>Examiner</b> Tan Le	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 10, 13, 14, 17, 18 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 11, 12, 15, 16, 19-22 and 27-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

1. This application contains 31 claims numbered 1-31.
2. In view of the Appeal Brief filed on 03/09/07, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) File a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) Request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Election/Restrictions***

2. Applicant's election with traverse of Group I, the species of Figures 1-2 in the reply filed on 2/15/06 is acknowledged. The traversal is on the ground(s) that the election requirement should be withdrawn because there is no serious burden if election is not required". This is not found to be persuasive because applicant has fail to show why the instant claims of Group I and Group II are not patentably distinct and the reason why there is not a serious burden involves in the field of a search between two Groups of two separate status claims locate in two separate classes of classifications. Clearly, this

imparts a serious burden on the Examiner to have to examine two patentably distinct inventions in the same application. The requirement is still deemed proper and is therefore made FINAL.

With respect to the elected embodiment, applicant indicated that claims 1-8, 12-16 and 19-31 are readable to the species of Figs 1-2 as elected. However, claims 13-14 and 23-26 are directed toward group II, which is not elected by Applicant. Also Claims 7-8 require a slot which is directed to the species of Figures 3-6; and claims 10 and 17-18 require a fencer, which is directed toward species of Figures 7 or 8. Only claims 1-6, 9, 11, 12, 15-16, 19-22 and 27-31 are readable to the elected species. Accordingly Claims 7-8, 10, 13-14, 17-18 and 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species/invention, there being no allowable generic or linking claim.

3. Amendment /Changes to specification filed 7/11/05 has been entered and drawings are approved

Note that on the amendment filed 7/11/05, Applicant has wrongly indicated the application serial number and Attorney docket number on the top corner of pages 2 through page 7. Attention is required in the next response.

### ***Claim Objections***

4. Claim 2 is objected to because “the plate” and “the storage unit” are drawn into the claim, see the recitation of “a plate *that attaches to the surface*” (line 2) and “a ring piece attached to the plate that *receives the storage unit and holds the storage unit* in place” (lines 3-4) (a combination) while the surface and the storage unit are not part of the claimed invention (see the recitation of “a holder *for securing a storage unit to a surface*” (claim 1, line 3) (a subcombination). Is the “the surface ” and “the storage unit”, a required part of the apparatus or not? Applicant cannot relate the apparatus to something not positively claimed, not defined (the surface and the storage unit) and rely on that “not claimed, not defined” to define over the art as part of the claim. Appropriate correction is required.

Claim 9 is also objected to for the same reason as claim 2

Claim 29 also objected to for the same reason as claim 2, see the recitation of “...dimensions equivalent to or greater than at least *one surface of a wastebasket*” (lines 7-8).

Claims 19 and 21 are also objected to because it seeks to define a claimed structure based upon comparison to an element otherwise not a part of the claims. This also raises the question of whether the combination or subcombination is being claimed. See the recitation “ the cover is sized and positioned on the holder to conceal in whole the storage unit and/or holder”

As to claim 31, claim 31 is also objected to because it is improper to use a dependent claim to expand the scope of the claim from subcombination to combination.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-6, 9, 12, 15-16, 19-22 and 27-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what direction is being defined/viewed as "a first direction" (claim 1) or "one direction" (claim 27, line 6) and (claim 29, last line). Since the view appears to be dependent upon location of the viewer only.

The recitation such as "or" (to conceal in whole or in part" (claim 1, line 5) also renders the claims indefinite because it's unclear to which one to the two nonequivalent alternatives the applicant is positively set forth.

Claim 12 is also indefinite for the same reason as in claim 1 (see "for concealing in whole or in part" (claim 12, line 3)

The function for the means (in claim 12, line 3) has not been properly set forth and is confusing. In particular, what function is the means performing?, is it for concealing or for securing? These two performing functions are different. Since the "means" set forth in claim 12, line 3 is lacking a *stated function* (no function is specified by the word(s) preceding "means,") therefore it is impossible to determine the equivalents of the element,

as required by 35 U.S.C. 112, sixth paragraph. See Ex parte Klumb, 159 USPQ 694 (Bd. App. 1967).

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4, 9, 11-12, 15-16, 19-22 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,377,941 to Har et al.

As to claim 1, Har et al. discloses a support frame for sink waste bags comprising a holder (26, 22, 50) (Fig. 1) and a cover (32) attached to the holder wherein the cover is sized and positioned on the holder to conceal the storage unit (27) from being viewed in a first direction.

As to claim 2, wherein the holder comprises a plate (50) that attaches to the surface (side wall, 36, 38); a ring piece (26) attached to the plate that receives the storage unit (27) and holds the storage unit in place; and a first mounting piece (48, 46) (Fig. 1B) attached to the ring piece (by the hinge blocks 56, 58.)

AS to claim 4, wherein the cover (32) comprises a second mounting piece (68, 70) (See Fig. 1 D) connected to the first mounting piece (46, 48) (by hinge blocks 64, 66).

AS to claim 9, wherein the holder comprises a plate (50) attached to the surface; and a platform (46, 48, 26) on which the storage unit sits, wherein the platform is attached to the plate.

As to claim 11, a storage unit (27) having a first (50) and second (46, 48, 26) mounting pieces, wherein the first mounting piece connects to a surface (side wall 26, 38); and a cover (32), wherein the second mounting piece connects to the cover.

As to claim 12, means (50) for securing a storage unit to a surface; means (cover 32) for concealing.

As to claim 15, wherein the first direction is directed toward a front elevation (the examiner chooses the direction above the cover is a first direction).

As to claim 16, further comprising a second mounting piece (68, 70) structured to attach to the cover and the first mounting piece (46, 48).

AS to claims 19-22, claims 19-22 recited limitations similar to those recite in claims 1 and 15 therefore also read on Har et al.

AS to claims 27-28, claims 27-28 are similar to those recited in claims 1 and 15, therefore also read on Har et al.

As to claims 29-30, a holder that includes a first section (50) structured to attach to a wall (36, 38), a second section (26) structured to support a waste basket (27) above a floor adjacent to the wall; and a third section (blocks 64, 66) structured to connect to a concealing cover 32 at 68, 70; and a cover 32 connected to the third section of the holder that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket 27 supported by the holder and wherein the cover 32 is connected to the third section of the holder in an orientation that hides the at least one surface of the wastebasket from being seen from at least one



direction; wherein the at least one direction is directed toward a front elevation (direction at the elevation above the cover).

As to claim 31, further comprising a wastebasket (2) connected to the second section of the holder.

Claims 1-6, 9, 11-12, 15-16, 19-22 and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,020,751 to Larkin.

As to claim 1, Larkin discloses a garbage bag and utility holder comprising a holder (14, 16, 18) (Fig. 1) and a cover (32) attached to the holder wherein the cover is sized and positioned on the holder to conceal the storage unit (27) from being viewed in a first direction.

As to claim 2, wherein the holder comprises a plate (60,) that attaches to the surface (side wall); a ring piece (14, 18) attached to the plate that receives the storage unit (50) and holds the storage unit in place; and a first mounting piece (42) (Fig. 1) attached to the ring piece.

As to claim 3, wherein any combination of the plate, the ring piece and the first mounting piece is detachable.

AS to claim 4, wherein the cover (32) comprises a second mounting piece (36) (see Fig. 1) connected to the first mounting piece (42) (connected to 18 where 18 connected to 42 is therefore connect to 42).

As to claim 5, wherein the second mounting piece is detachable from the

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first mounting piece.

As to claim 6, wherein the second mounting piece (40) (nut) is detachable from the cover.

As to claim 9, wherein the holder comprises a plate (60) attached to the surface; and a platform (14) on which the storage unit sits, wherein the platform is attached to the plate.

As to claim 11, a storage unit (10) having a first (60) and second (36) mounting pieces, wherein the first mounting piece (42) connects to a surface (58); and a cover (32), wherein the second mounting piece connects to the cover.

As to claim 12, means (60, 42, 14) for securing a storage unit to a surface; means (cover 32) for concealing.

As to claim 15, wherein the first direction is directed toward a front elevation (the examiner chooses the direction above the cover is a first direction).

As to claim 16, further comprising a second mounting piece (36) structured to attach to the cover and the first mounting piece (42).

As to claims 19-22, claims 19-22 recited limitations similar to those recite in claims 1 and 15 therefore also read on Larkin.

AS to claims 27-28, claims 27-28 are similar to those recited in claims 1 and 15, therefore also read on Larkin.

As to claims 29-30, a holder (fig. 1) that includes a first section (60) structured to attach to a wall (58), a second section (14, 18, 42) structured to support a waste basket (50) above a floor adjacent to the wall; and a third section (36) structured to connect to a concealing cover 32; and a cover 32 connected to the third section of

the holder that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket 50 supported by the holder and wherein the cover 32 is connected to the third section of the holder in an orientation that hides the at least one surface of the wastebasket from being seen from at least one direction; wherein the at least one direction is directed toward a front elevation (direction at the elevation above the cover).

As to claim 31, further comprising a wastebasket (2) connected to the second section of the holder.

### ***Response to Arguments***

9. Applicant's arguments filed 7/11/05 and 3/09/07, with respect to the rejection(s) of claims 1-6, 9, 11, 12, 15-16, 19-22 and 27-31 under 102(b) as being anticipated by Barbour have been fully considered and are persuasive. Therefore, the finality of rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Har et al./Larkin.

### ***Conclusion***

**THIS ACTION IS MADE NONFINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818.

The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tan Le  
July 2, 2007



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